

DETAILED ACTION

Response to Amendment

1. The indicated allowability of claims 3, 10 and 14 is withdrawn in view of the new grounds of rejection. The rejections follow.
2. This action is in response to the amendment filed June 11, 2008. The amendment has been entered in the case and the following action is Non-Final.

Election/Restrictions

3. Claims 16-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 11, 2007.
4. Applicant's election without traverse of the product claims 1-15 in the reply filed on July 11, 2007 is acknowledged. Please note, that claim 21 is drawn to the non-elected method.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-7, 10, 11, 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beale et al. (U.S. 2003/0047838) in view of Sarnoff et al. (U.S. 6,905,017). Beale et al. teach that it is known to use silicone rubber containers for cookware, bakeware, molds, etc. Beale et al. also teach that the container holds batter for baking (see paragraph [0020]). In paragraph [0038], it is disclosed that the

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container may have a single well for the food product. Beale et al. do not specifically disclose the shape of the receptacle, however, Sarnoff et al. shows that single serve receptacles with fluted side walls are known in the art. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Beale et al. with the mold being made in the shape of a liners 14 of Sarnoff et al., in order to give the baked product the shape of a standard cupcake or muffin.

Allowable Subject Matter

7. Claims 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. In view of the new grounds of rejection, this action is made Non-Final.

Conclusion

9. **THIS ACTION IS MADE NON-FINAL.**

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Niki M. Eloshway/

Niki M. Eloshway
Examiner
Art Unit 3781

nme

/Anthony D Stashick/
Anthony D Stashick
Supervisory Patent Examiner, Art Unit 3781